



Federal Communications Commission  
Washington, D.C. 20554

March 22, 2012

DA 12-443

**Via Certified Mail, Return Receipt Requested**

Mary Vargas  
280 Saddleback Road  
Austin, TX 78737

**Re: Final Default Payment for Auction 62 Construction Permits FM396-C3 (Cheboygan, MI) and FM407-C2 (Browning, MT)**

**DO NOT DISCARD THIS IMPORTANT NOTICE**  
**OF A DEMAND FOR PAYMENT**  
**OF A DEBT OWED THE UNITED STATES AND ORDER OF PAYMENT**

Dear Ms. Vargas:

This Order provides notice and demands payment of a debt owed to the United States based on your default on the final payment for construction permits you won in Auction 62.

You were the winning bidder on FM broadcast construction permits FM396-C3 (Cheboygan, MI) and FM407-C2 (Browning, MT) in Auction 62. After the close of Auction 62, you defaulted on your final payment obligation for both permits.<sup>1</sup> Thus, pursuant to the Commission's rules,<sup>2</sup> you owe a default payment, which is a debt owed to the United States.<sup>3</sup> In 2008, the Commission assessed an initial default payment totaling \$9,496.50, from the monies you had on deposit.<sup>4</sup> New construction permits for the same spectrum were offered in two subsequent auctions of FM broadcast construction permits (Auctions 79 and 91), and because they received winning bids,<sup>5</sup> the Commission is now able to calculate your final default payment obligation with respect to these two construction permits.<sup>6</sup>

Under the Commission's rules, at the close of the auction, a winning bidder assumes a binding obligation to pay the full amount of its accepted winning bid. A bidder who defaults on that obligation or is disqualified is subject to a default payment.<sup>7</sup> The default payment has two components. The first

<sup>1</sup> See Letter from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and Peter H. Doyle, Chief, Audio Division, Media Bureau, 23 FCC Rcd 1745 (2008) ("*Letter Order*").

<sup>2</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

<sup>3</sup> 31 U.S.C. § 3701(b)(1).

<sup>4</sup> 47 C.F.R. § 1.2104(g)(2). See also *Letter Order*, 23 FCC Rcd at 1745.

<sup>5</sup> See Auction of FM Broadcast Construction Permits Closes: Winning Bidders Announced for Auction 79, *Public Notice*, 24 FCC Rcd 11903 (2009) ("*Auction 79 Closing Public Notice*"); Auction of FM Broadcast Construction Permits Closes: Winning Bidders Announced for Auction 91, *Public Notice*, DA 11-891 (rel. May 23, 2011) ("*Auction 91 Closing Public Notice*").

<sup>6</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>7</sup> 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b).

component is the difference between the bidder's net defaulted bid and the subsequent net winning bid, or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less, the next time a license or construction permit for the spectrum is won, if the subsequent winning bid is less than the defaulted bid.<sup>8</sup> The second component of the default payment is an additional payment, which, pursuant to the rule in effect at the time of Auction 62, is equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.<sup>9</sup> In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to three percent (3%) of the defaulted payment.<sup>10</sup>

As shown in Attachment A, in accordance with section 1.2104(g)(2) of the Commission's rules, we have completed the final default payment calculation and, after applying the monies you have on deposit, you owe an outstanding balance of \$201,908.75. This debt to the United States is payable in full and without further demand within 30 days of the date of this Order in accordance with the Notice Information provided below and Payment Instructions at Attachment B.

### **Important Notice Information**

The following provides notification of procedures and information required by the Debt Collection Improvement Act of 1996 ("DCIA").<sup>11</sup> The outstanding balance shown in Attachment A is a debt you owe to the United States. It is payable in full and without further demand, and payment must be received no later than the payment due date, which is 30 days from the date of this Order ("Due Date").<sup>12</sup> Any portion of the debt unpaid at the end of the Due Date will be considered delinquent and administrative charges (incurred for processing and handling delinquent debts),<sup>13</sup> interest,<sup>14</sup> and penalties<sup>15</sup> will accrue beginning from that date. Interest accrues at a minimum annual rate established annually by the United States Treasury in accordance with 31 U.S.C. § 3717.<sup>16</sup> A penalty of six percent (6%) accrues on any portion of the debt that remains unpaid for more than 90 days from the Due Date.<sup>17</sup> However, the Commission will waive payment of the accrued interest, if the full amount of the debt is paid within 30 days of the Due Date.<sup>18</sup> In addition to these charges, the Commission may initiate administrative offset,<sup>19</sup> and it may refer the delinquent debt to the United States Treasury or the

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<sup>8</sup> 47 C.F.R. § 1.2104(g)(2)(i).

<sup>9</sup> 47 C.F.R. § 1.2104(g)(2)(2005).

<sup>10</sup> *Id.*

<sup>11</sup> Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) *codified in relevant part at* 31 U.S.C. §§ 3716 (administrative offset) and 3717 (interest and penalty on claims); *see also* 47 C.F.R. §§ 1.1911, 1.1912, and 1.1940.

<sup>12</sup> As noted at Attachment B, if the 30<sup>th</sup> day falls on a non-business day, payment must be received on the next business day.

<sup>13</sup> 31 U.S.C. § 3717(e)(1); 47 C.F.R. § 1.1940(c).

<sup>14</sup> 31 U.S.C. § 3717(b); 47 C.F.R. § 1.1940(b).

<sup>15</sup> 31 U.S.C. § 3717(e); 47 C.F.R. § 1.1940(d).

<sup>16</sup> 47 C.F.R. § 1.1940(b).

<sup>17</sup> 31 U.S.C. § 3717(e)(2); 47 C.F.R. § 1.1940(d).

<sup>18</sup> 31 U.S.C. § 3717(d); 47 C.F.R. § 1.1940(g).

<sup>19</sup> 47 C.F.R. § 1.1912. Under this provision, the Commission may refer the debt to the United States Treasury for centralized administrative offset whereby, subject to certain exceptions, money otherwise payable to the debtor by the United States government may be used to satisfy the debt. In addition, "unless otherwise prohibited by law," the Commission may conduct "non-centralized, ad hoc case-by-case offsets when centralized offset is unavailable or inappropriate." 47 C.F.R. § 1.1912(c).

Department of Justice (“DOJ”) for further collection action.<sup>20</sup> The United States Treasury will impose an additional administrative collection charge,<sup>21</sup> and it may also commence administrative offset.<sup>22</sup> An additional surcharge may be imposed, if the DOJ initiates judicial action to recover judgment.<sup>23</sup> Furthermore, any portion of the debt that is unpaid after the Due Date specified in this order is a delinquent debt, which will trigger application of the Commission’s red light procedures at 47 C.F.R. § 1.1910.

### Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 309, and section 1.2104(g)(2) of the Commission’s rules, 47 C.F.R. § 1.2104(g)(2), Mary Vargas is ASSESSED a final default payment obligation as computed in Attachment A.

IT IS FURTHER ORDERED that, pursuant to sections 1.2104 and 1.2106 of the Commission’s rules, 47 C.F.R. §§ 1.2104 and 1.2106, Mary Vargas’s interim payment or funds on deposit will be applied towards the final default payment.

IT IS FURTHER ORDERED that Mary Vargas’s debt of \$201,908.75 is payable in full and without further demand, and it must be paid within 30 days of the date of this Order (the Due Date), in accordance with the payment instructions in Attachment B, and any portion of the debt unpaid after the Due Date is delinquent, and under 31 U.S.C. § 3717, administrative charges, interest, and penalties will accrue.

IT IS FURTHER ORDERED that this Order and a FCC Remittance Advice Form (FCC Form 159, Version 2/03) shall be sent to Mary Vargas and her representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by section 0.331 of the Commission’s rules, 47 C.F.R. § 0.331.

Sincerely,

Margaret W. Wiener  
Chief, Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau

cc: Fred Hannel  
Mary Vargas (270 Abbey Drive, Austin, TX 78737)

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<sup>20</sup> 31 U.S.C. §§ 3711(g), 3716; 28 U.S.C. § 3001, *et seq.*; 47 C.F.R. § 1.1912. Transfer may be made without further notice at any time after the Due Date specified.

<sup>21</sup> 31 U.S.C. § 3717(e); 31 C.F.R. § 285.12 (j).

<sup>22</sup> 31 U.S.C. § 3716; 47 C.F.R. § 1.1912(b) (mandatory centralized administrative offset).

<sup>23</sup> 28 U.S.C. § 3011.

**ATTACHMENT A**

**Multi-Auction Default Payment Report**

<b>License Number Frequency Block</b>	<b>Defaulted Gross Bid Auction 62</b>	<b>Defaulted Net Bid Auction 62</b>	<b>Re-auction Gross Bid Auction 79</b>	<b>Re-auction Net Bid Auction 79</b>	<b>3% Payment</b>	<b>Lower Difference Payment</b>	<b>Final Payment</b>
FM407-C2 (Browning, MT)	\$45,000.00	\$29,250.00	\$7,500.00	\$4875.00	\$146.25	\$23,625.00	\$24,521.25

<b>License Number Frequency Block</b>	<b>Defaulted Gross Bid Auction 62</b>	<b>Defaulted Net Bid Auction 62</b>	<b>Re-auction Gross Bid Auction 91</b>	<b>Re-auction Net Bid Auction 91</b>	<b>3% Payment</b>	<b>Lower Difference Payment</b>	<b>Final Payment</b>
FM396-C3 (Cheboygan, MI)	\$442,000.00	\$287,300.00	\$15,000.00	\$11,250.00	\$337.50	\$276,050.00	\$276,387.50

Total Final Default Payment Due	\$300,908.75
Less Amount on Deposit	\$99,000.00
<b>Outstanding Balance Due on Final Default Payment</b>	<b>\$201,908.75</b>

**ATTACHMENT B**

The following information is being provided to assist you in making your payment.

**PAYMENT INSTRUCTIONS**

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Wire transfer payments must be received by 6:00 PM Eastern Time, no later than thirty days from the date of the ORDER; however, if the 30th day falls on a non-business day, e.g., Saturday, Sunday or holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: 021030004

Receiving Bank: TREAS NYC

33 Liberty Street

New York, NY 10045

BNF: FCC/Account #27000001

OBI Field: (Skip one space between each information item)

"AUCTIONPAY"

APPLICANT FCC REGISTRATION NO. (FRN) (same as FCC Form 159, Block 21)

PAYMENT TYPE CODE (enter "APEN") same as FCC Form 159, Block 24A

FCC CODE 1 (same as FCC Form 159, Block 28A: "62")

PAYOR NAME (same as FCC Form 159, Block 2)

LOCKBOX No.: 979088

A completed FCC Remittance Advice Form (FCC Form 159, Version 2/03) must accompany payments. On the same business day that the applicant submits their wire transfer, the applicant must submit a completed FCC Form 159 via facsimile to U.S. Bank at (314) 418-4232, at least one-hour prior to placing the order for the wire transfer. The specified debt is due and payable to the United States immediately and without demand, and it is subject to interest, penalties, and additional administrative costs. Interest accrues from the date of the ORDER; however, to avoid the payment of charges (i.e., interest, penalties, and administrative costs) and enforced collection, full payment must be made and received within 30 days from the date of the ORDER. Debtor's failure to make complete timely payment will result in assessment of such charges permitted by 31 U.S.C. § 3717.

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578.